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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/730,315	12/04/2003	David A. R. Barnitz	1626	2219

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Mark C. Jacobs, Esq.
3033 El Camino Avenue
Sacramento, CA 95821-6014

EXAMINER

BRANDT, ADAM CURTIS

ART UNIT PAPER NUMBER

3771

DATE MAILED: 10/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/730,315	Applicant(s) BARNITZ, DAVID A. R.	
	Examiner Adam Brandt	Art Unit 3771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 August 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
 4a) Of the above claim(s) 3,4,7 and 8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,5,6,9-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12/04/2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of 2 strap and 4 strap embodiments in the reply filed on 8/09/2006 is acknowledged. The traversal is on the ground(s) that there is no distinction and they operate in the same manner. This is not found persuasive because the claims are related as disclosed but are distinct as claimed. There are generic claims from which the different species are drawn. The embodiments are distinct in that embodiment I has 4-bands and embodiment II has 2-bands. While the different embodiments may accomplish the same task, the different embodiments are slightly different in operation. There is no seam in the 2-band embodiment that attaches the 4-bands in to 2-bands. Area B, where the wrapping occurs, is arranged differently and can affect the hook/loop performance of the different embodiments. The fabric hook 16 is clearly attached differently in 2-band embodiment and 4-band embodiment. For these reasons, the requirement is still deemed proper and is therefore made FINAL.

2. The Applicant's election of the 2-band embodiment and claims drawn to the 2-band embodiment have acknowledged by the Examiner. Examination will proceed on claims relating to the 2-band embodiment. Claims drawn to the 4-band embodiment, claims 3, 4, 7, 8, must be withdrawn by the Applicant. Examination will not proceed on claims 3,4,7 and 8.

Drawings

3. The drawings are objected to because reference number 30d, 30e, 30f, and 42 are used without any reference in the specification.

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4. The specification recites the “A” section is “the part that extends beyond the edge of the body”, however the drawings show “A” pointing to that portion of the band that is within the edges of the body. The drawings appear to conflict with the specification.

5. The drawings also do not appear to show the oblique angle to the inner edge.

Additionally, the function of the oblique inner edge (17) is not clear.

6. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

7. The disclosure is objected to because of the following informalities: Line 9 of page 4 identifies an “outer layer” with the reference number 12. Line 14 of page 4 refers to reference number 12 as “upper layer.” Please clarify the definition.
8. Line 33 of page 4 introduces sections “A” and “B” of the bands. The description is not consistent with figures 2 and 4. Please clarify the definition of sections “A” and “B” or properly identify sections “A” and “B” on figures 2 and 4.
9. Line 12 of page 4 identifies “upper and lower parallel edges” with reference number 19. The reference number does not appear on any figures. Please clarify the location of reference 19 on the figures.
10. The use of the trademark Velcro® has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

Claim Rejections - 35 USC § 112

11. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.
12. **Claim 1 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement.** The claim(s) contains subject matter which was not described in

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the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. With out undue experimentation, one skilled in the art would not be able to understand how the hook on the lower surface of (B) would be attached to the loop material on segment (A).

13. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

14. **Claims 1, 2, 5, 6, 9-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.** The words “generally” (ln 4), “preferably” (ln 5), and “or the like” (ln18) do not define the structure of the invention with definiteness.

15. Regarding claim 1, the phrase "or the like" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "or the like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

16. Claim 1 recites the limitation "the termini of the band" in ln. 7-8. There is insufficient antecedent basis for this limitation in the claim. Neither, a Termini or a band has been introduced in the claim at this point. A specific termini or band cannot be defined.

17. Claim 1 recites the limitation "the inner body edge" in ln. 6. There is insufficient antecedent basis for this limitation in the claim.

18. Claim 8 recites “the seamed junction of each of the two pairs of bands The device of claim 1...”. It appears that either words are missing or the claim was not properly written.

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19. In claims 10 and 12, it is not clear what is meant by the film base having “front Velcro® tabs on the undersaide thereof” (emphasis added). What is meant by a front tab located on the back side of the base?

20. Claim 10 recites the limitation “the top side” in ln. 6. There is insufficient antecedent basis for this limitation in the claim.

21. Claim 11 recites “Velcro® or equal tab”. It is unclear what is meant by this phrasing.

22. In claim 11, it is not clear if the Velcro® tab recited is the same or different from those recited in claim 10. Claim 10 has already recited there are a plurality of Velcro® tabs on the underside of the film base. Claim 11 recites a second set of Velcro® tabs at the corners of the underside of the film base. There is no disclosure for anything in addition to the Velcro® tabs at the corners of the underside of the film base.

23. Claim 12 recites the limitation “said first and second Velcro tabs” in ln. 14. There is insufficient antecedent basis for this limitation in the claim. A first set of Velcro tabs is disclosed in ln. 11, but is unclear if this the set of Velcro tabs referenced by the Applicants.

24. The Applicants defines portions of the strap with letters in quotation marks, for example, segment “A” and “B”. This does not define the structure of the invention. It is suggested the Applicant replace the quotation marks with parenthesis so that there is reference to a structural feature (as presented in the drawings).

25. Claim 1 is not commensurate with the graphical description found in the disclosure. The Applicant is claiming segment (A), but the words in the claim describe segment (B) as illustrated in figure 4. The Applicant’s claim language in regards to segment (A) and (B) is not congruent with the figures. It is believed that the Applicant is in error.

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26. Claims 2, 5, 6, 9, 13-16 are rejected because they are dependent on a base claim that cannot be fully understood. The Examiner will proceed with the examination of the claims to the understanding as appropriate set forth in the disclosure as provided by the Applicant.

Claim Rejections - 35 USC § 102

27. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

28. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Schaeffer (USPN 5,577,516).

29. **In regard to claim 1:** Schaeffer discloses a handcuff replacement restraint for arms or legs comprising a body portion (14, pressure plate) having an upper layer (proximal side of 14) and lower layer (distal side of 14),

said body portion having a generally rectangular body with parallel upper and lower edges, and an out edge normal to said upper and lower edges, but preferably having the inner body edge slightly oblique (figures 1,3,4,5,6).

said body having a transversely disposed segment of webbing secured to said body at the termini of the band, and being formed into a central loop spaced from said body (68, aperture)

a plurality of bands each of which has an “A” and “B” segment (figure 1, two bands)

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said “A” segment (28, figure 2a) being loop pile closure (36) secured along the length of the body from the outer edge to the inner edge thereof, the loop surface disposed outwardly from said body (figure 2a),

the “B” segment extending from the inner edge of said body a distance equal to the body length (col. 4, ln. 21-32)

said “B” segment having a loop pile upper surface (36), and a hook fabric closure on lower surface (34, see figure 1).

whereby when the body portion is wrapped around a body limb, and the “B” segment of the band is overlaid on the “A” segment (figure 4,5,6). Inherently, aperture (68) is capable of having a chain, rope, belt, or the like attached in order to secure the limb of the wearer so that it can be restrained by attachment to a fixed object to prevent movement of the wearer.

30. In regard to claim 2: Schaeffer discloses the device of claim 1, wherein there are two hook and pile closure bands attached to the body and extending outwardly therefrom (figure 1).

31. Claims 10 and 11 are rejected under 35 U.S.C. 102(a) as being anticipated by Darcey (USPN 6,835,182 B2).

32. In regard to claim 10: Darcy discloses a replaceable pad insert for use in a fabric-based restrainer, said insert comprising: a flexible film base (40) having a tab side (proximal side of 11) and an underside (distal side of 11); and having a plurality of front Velcro tabs (38) on the underside of the body thereof, and a pad adhesively attached to the top side of the film base (41, col. 9, ln 31-46).

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33. **In regard to claim 11:** Darcy discloses the replaceable pad of claim 10, wherein the film base is rectangular (see figure 6), and there is a second Velcro or tab on each corner of the underside of the film base (38, see figure 6).

Claim Rejections - 35 USC § 103

34. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

35. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

36. **Claim 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schaeffer (USPN 5,577,516).**

37. **In regard to claim 5:** Schaeffer discloses the device of claim 1, wherein the body has an upper layer and a lower layer. Schaeffer fails to disclose that the upper layer is made of canvas and the lower layer is made of velour. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use canvas for the upper layer and velour for the

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lower layer because canvas would have better endurance characteristics to tolerate the rough surface of the hook material and the velour material would more gentle on the skin of the wearer. Therefore, it would have been obvious to use different materials in the construction of the device since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

In re Leshin, 227 F.2d 197, 125 USPQ 416.

38. **In regard to claim 6:** Schaeffer discloses the device of claim wherein there is a webbing segment. Schaeffer does not disclose that the webbing segment is nylon. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use nylon for the webbing segment, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 227 F.2d 197, 125 USPQ 416.

Allowable Subject Matter

1. Claims 13-16 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

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Conclusion

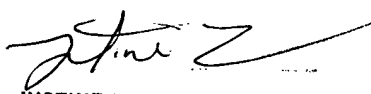
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Adam Brandt whose telephone number is 571-272-7199. The examiner can normally be reached on 8:30 AM to 4:30 PM; Mon thru Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Adam Brandt
Examiner
Art Unit 3771

ACB


JUSTINE R. YU
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700

10/25/06